

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

THOMAS E. PEREZ, Secretary of Labor, :
United States Department of Labor, :
Plaintiff, : CIVIL ACTION
: FILE NO. **16-CV-01078**
v. :
: :
LORI JO. MUELLER, and the : Judge David S. Doty
EDELWEISS 401(K) PLAN :
Defendants. :

CONSENT ORDER AND JUDGMENT
WITH RESPECT TO LORI JO. MUELLER

Plaintiff **THOMAS E. PEREZ**, Secretary of Labor, United States Department of Labor, pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., filed a complaint against defendant Lori Jo. Mueller, alleging breaches of his fiduciary responsibilities under ERISA §§ 404 and 406, 29 U.S.C. §§ 1104 and 1106, with respect to the Edelweiss 401(k) Plan ("Plan"). Furthermore, the Plan was named as a defendant pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief would be granted.

Defendant Lori Jo. Mueller waived service of process of the complaint and admitted to the jurisdiction of this Court over her and the subject matter of this action.

The Plaintiff and Defendants agree to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty pursuant to ERISA §502(l),

29 U.S.C. §1132(l), and any proceedings related thereto), and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendant Lori Jo. Mueller is removed from her position as a fiduciary with respect to the Edelweiss 401(k) Plan (“Plan”).

2. Defendant Lori Jo. Mueller is permanently enjoined from violating the provisions of Title I of ERISA.

3. Defendant Lori Jo. Mueller is permanently enjoined from acting as a fiduciary or service provider to any ERISA-covered employee benefit plan.

4. Grabel, Schniders, Hollman & Co., PC of 206 W. Argone Kirkwood, MO 63122 (“Independent Fiduciary”), is hereby appointed as the independent fiduciary for the Plan to administer the Plan and to terminate the Plan consistent with the Plan’s governing documents, the Internal Revenue Code, and ERISA. (See Curriculum of Vitae Grabel, Schniders, Hollman & Co., PC attached as Exhibit A and incorporated herein.) The Independent Fiduciary shall have the following powers, duties and responsibilities:

- a. The Independent Fiduciary shall have responsibility and authority to collect, liquidate, and manage such assets of the Plan for the benefit of the eligible participants and beneficiaries of the Plan who are entitled to receive such assets, until such time that the assets of the Plan are distributed to the eligible participants and beneficiaries of the Plan and the Plan is fully terminated;

- b. The Independent Fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Consent Order and Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled. The Independent Fiduciary shall comply with the guidance in EBSA Field Assistance Bulletin 2014-01, Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans (Aug. 21, 2014) available at <http://www.dol.gov/ebsa/regs/fab2014-1.html>, in attempting to locate participants and handling missing participants;
- c. The Independent Fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including that information contained in the records of the Plan's custodial trustees and other service providers, bearing on the distribution of benefit payments, participant account balances and current plan assets;
- d. The Independent Fiduciary may retain such persons and firms including, but not limited to, accountants and attorneys, as may be reasonably required to perform his duties hereunder;
- e. The Independent Fiduciary shall initiate the termination of the Plan in accordance with ERISA within thirty (30) days of entry of this Consent Order and Judgment. The Independent Fiduciary's responsibilities shall include, but not be limited to, causing the distribution of the Plan's assets to the Plan participants and filing all appropriate documents with the various government agencies. The Plan shall be fully terminated within ninety (90) days of the

entry of this Consent Order and Judgment. Within thirty (30) days from the date that the Plan is fully terminated, the Independent Fiduciary shall provide satisfactory proof of such termination, including proof of issuance of the Plan's participant distributions, to the Regional Director of the Employee Benefits Security Administration, United States Department of Labor, 2300 Main Street, Suite 1100, Kansas City, MO 64108; and,

- f. After terminating the Plan for the services performed pursuant to this Consent Order and Judgment, the Independent Fiduciary shall receive compensation, from the Plan not to exceed \$1,800 for fees, costs, and expenses reasonably and necessarily incurred in administering and terminating the Plan.

4. Defendant Lori Jo. Mueller agrees to fully cooperate with any requests from the independent fiduciary, any service provider, the Regional Director, or asset custodian, which relate to the administration and termination of the Plan.

5. Each party agrees to bear his, her or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

6. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

7. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

DATED: January 6, 2017

/s David S. Doty
DAVID S. DOTY
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this Consent Order and Judgment:

The undersigned apply for and consent to the entry of this Consent Order and Judgment.

Dated this 5th day of January, 2017.

FOR DEFENDANT:

s/ Lori Jo. Mueller
LORI JO. MUELLER

FOR PLAINTIFF:

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Mark H. Ishu
MARK HENRY ISHU
Trial Attorney

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FOR INDEPENDENT FIDUCIARY:

s/ Lloyd W. Schnieders
**GRABEL, SCHNIEDERS,
HOLLMAN & CO., PC,**
for proposed Independent Fiduciary

By: Lloyd W. Schnieders